

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

No. C 06-7339 CW

THOMAS FERNANDEZ; LORA SMITH; and
TOSHA THOMAS, individually and on
behalf of a class of all other
persons similarly situated,

Plaintiffs,

v.

K-M INDUSTRIES HOLDING CO., INC.; K-M
INDUSTRIES HOLDING CO., INC. ESOP
PLAN COMMITTEE; WILLIAM E. AND
DESIREE B. MOORE REVOCABLE TRUST;
TRUSTEES OF THE WILLIAM E. AND
DESIREE B. MOORE REVOCABLE TRUST; CIG
ESOP PLAN COMMITTEE; NORTH STAR TRUST
COMPANY; DESIREE B. MOORE REVOCABLE
TRUST; WILLIAM E. MOORE MARITAL
TRUST; WILLIAM E. MOORE GENERATION-
SKIPPING TRUST; and DESIREE MOORE,
both in her individual capacity and
as trustee of the William E. and
Desiree B. Moore Revocable Trust's
successor trusts named above,

Defendants.

ORDER DENYING NORTH
STAR'S MOTION FOR
LEAVE TO FILE A
MOTION FOR
RECONSIDERATION AND
ALTERNATIVE MOTION
FOR ENTRY OF
JUDGMENT AGAINST
SETTLING DEFENDANTS

Defendant North Star Trust Company moves for leave to file a
motion for reconsideration of the Court's August 21, 2009 Order
Denying North Star's Motion for Judgment on the Pleadings and
Granting the Settling Parties' Cross Motion for Judgment on the

1 Pleadings (Docket No. 330). North Star also moves, in the
2 alternative, for entry of judgment under Federal Rule of Civil
3 Procedure 54(b) as to the William E. and Desiree B. Moore Revocable
4 Trust; Trustees of the William E. and Desiree B. Moore Revocable
5 Trust; CIG ESOP Plan Committee; Desiree B. Moore Revocable Trust;
6 William E. Moore Marital Trust; William E. Moore Generation-
7 Skipping Trust; Desiree Moore, both in her individual capacity and
8 as trustee of the William E. and Desiree B. Moore Revocable Trust's
9 successor trusts; K-M Industries Holding Co., Inc; and the K-M
10 Industries Holding Co., Inc., ESOP Plan Committee (collectively,
11 Settling Defendants).

12 I. Motion for Leave to File a Motion for Reconsideration

13 Civil Local Rule 7-9(a) provides, "No party may notice a
14 motion for reconsideration without first obtaining leave of Court
15 to file the motion." A motion for leave to file a motion for
16 reconsideration may be granted if the moving party shows a
17 "manifest failure by the Court to consider material facts or
18 dispositive legal arguments which were presented to the Court
19 before such interlocutory order." N.D. Cal. Civ. L.R. 7-9(b)(3).
20 A party may not simply repeat arguments made in support of or in
21 opposition to the interlocutory order. L.R. 7-9(c).

22 In its August 21, 2009 Order, the Court concluded that Section
23 2(b) "does not require the Moore Trust Defendants to indemnify
24 North Star" August 21, 2009 Order at 16. North Star now
25 claims that the Court "plainly misconstrued NSTC's arguments" and
26 "misread the text of Section 2(b)" when it interpreted the section
27 as an indemnity clause. Mot. at 4. However, North Star's position
28 here contradicts its earlier one. In its Motion for Judgment on

1 the Pleadings, North Star maintained that it succeeded to Mr.
2 Moore's indemnification rights under the 1998 and 1999 stock
3 purchase plans. North Star's Opp'n and Reply Re: Cross Motions for
4 J. on the Pleadings at 14-15. Referring to Section 2(b), North
5 Star stated that "it automatically assumed [Mr. Moore's] rights to
6 indemnity under the terms of the Stock Purchase Plan." Id. at 15.
7 To further support its argument, North Star also asserted that the
8 Settling Parties "admit[ted] that section 2(b) of the stock
9 purchase agreements indemnify NSTC against claims of
10 overpayment" Id. at 16. The Court interpreted Section
11 2(b) as North Star represented it. North Star cannot use a
12 reconsideration motion to introduce a new argument that contradicts
13 its earlier one.

14 North Star also asserts that Section 2(b) cannot be an
15 indemnification clause because it simply requires "the return of
16 Employee Stock Option Program (ESOP) property to the trustee for
17 the benefit of ESOP participants." Mot. at 4. This argument fails
18 for the reasons stated above. Moreover, as North Star points out,
19 it raised this argument at the hearing. Id.; Tr. of August 6, 2009
20 Hearing at 8:18-20, 9:14-16. In its current motion, North Star
21 merely repeats the argument and does not show that the Court
22 manifestly failed to consider it.

23 Finally, North Star argues that the Court's Order interferes
24 with North Star's contractual rights pursuant to Section 2(b)
25 because the Order allows Plaintiffs to "negotiate away" North
26 Star's rights. Mot. at 5-6. This is a restatement of North Star's
27 argument in the prior motion. See Opp'n and Reply at 16-17.

28 For the foregoing reasons, the Court DENIES North Star's

1 motion for leave to file a motion for reconsideration.

2 II. Alternative Motion for Rule 54(b) Entry of Judgment

3 North Star argues that final judgment should enter against
4 Settling Defendants because "the claims against them that have been
5 decided by the Court are distinct and severable from the claims
6 remaining in the case" Mot. at 3. Settling Defendants
7 argue that there is substantial factual overlap between the settled
8 and remaining claims, and to enter judgment at this stage would
9 result in multiple appeals to the Ninth Circuit.

10 Federal Rule of Civil Procedure 54(b) provides,

11 When an action presents more than one claim for
12 relief -- whether as a claim, counterclaim,
13 crossclaim, or third-party claim -- or when
14 multiple parties are involved, the court may
15 direct entry of a final judgment as to one or
16 more, but fewer than all, claims or parties
17 only if the court expressly determines that
18 there is no just reason for delay.

19 A court has discretion in determining whether a Rule 54(b) judgment
20 should enter. See Wood v. GCC Bend, LLC, 422 F.3d 873, 878 (9th
21 Cir. 2005) (citing Curtiss-Wright Corp. v. Gen. Elec. Co., 446 U.S.
22 1, 8 (1980)). In exercising its discretion, a court must consider
23 "judicial administrative interests as well as the equities
24 involved. Consideration of the former is necessary to assure that
25 application of the Rule effectively 'preserves the historic federal
26 policy against piecemeal appeals.'" Curtiss-Wright, 446 U.S. at 8
27 (citation omitted).

28 Entry of final judgment against Settling Defendants is not
appropriate at this time. North Star asserts that legal and
factual issues would not appear before the Ninth Circuit more than
once. In particular, North Star asserts that, because factual

1 issues concerning whether it breached its fiduciary duty have not
2 yet been resolved, they would not be the subject of an appeal if a
3 partial final judgment were entered under Rule 54(b). See Reply at
4 8. While this may be true, North Star's argument impliedly
5 concedes that it would file multiple appeals. This would be
6 inefficient and contravene the policy against piecemeal appeals.
7 Therefore, North Star's alternative motion is DENIED.

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9 IT IS SO ORDERED.

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11 Dated: October 20, 2009



CLAUDIA WILKEN
United States District Judge